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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

#131

## CRIMINAL MINUTES - GENERAL

Case No.	CR 10-00011 PSG	Date	Sept. 8, 2011
Title	U.S.A. v. Richard R. Lopez, Jr., M.D.		

Present:	The Honorable Philip S. Gutierrez, United States District Judge
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Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s): Attorneys Present for Defendant(s):

Not Present Not Present

**Proceedings:** **(In Chambers) Order GRANTING in part and DENYING in part Defendant's motion to strike prejudicial surplusage from the Indictment and to preclude evidence regarding inflammatory allegations**

Before the Court is Defendant Richard R. Lopez, Jr.'s ("Defendant" or "Dr. Lopez") motion to strike prejudicial surplusage from the Indictment and to preclude evidence regarding inflammatory allegations. *See* Dkt. # 131 (July 21, 2011). A hearing on the motion was held on September 7, 2011. Upon considering the moving and opposing papers, as well as arguments presented at the hearing, the Court GRANTS in part and DENIES in part Defendant's motion.

Specifically, the Court agrees with Defendant that, as indicated below, the following language should be stricken from paragraphs 34 and 36 of the Indictment:

34. As a result of this conduct, A-H was removed from the liver transplant waiting list on or about September 2003, ~~and was thereafter deprived of the opportunity to have this life-saving operation.~~

36. A-H returned to SVMC for a follow-up visit on or about April 2004, but at that time was found to be too ill to be transplanted. ~~A-H returned to his home country and died on or about July 2004.~~

The government, moreover, conceded to such at the hearing. Accordingly, with respect to the above-referenced allegations, Defendant's motion is GRANTED.

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With respect to the other objections raised by Defendant in his motion, the Court disagrees that the allegations violate the prejudice standard for purposes of the surplusage analysis and that the probative value of such allegations is outweighed by the danger of unfair prejudice or confusion under Federal Rule of Evidence 403. Further, the Court notes that counsel's reliance on its December 16, 2010 Order (the "Order") denying Defendant's motion to dismiss the Indictment based on grand jury defects and prosecutorial misconduct is of little avail. During the hearing, counsel recited the following portion of that Order:

For instance, it was a juror – not the case agent – who used the term "death sentence" to describe a letter allegedly sent by Dr. Lopez suggesting that A-H's appointments be pushed back until 2005. It was a juror – not the case agent – who used the word "premeditated" following testimony about Dr. Lopez's and Dr. Mekhemar's awareness of A-H's and A-B's status. And again, it was a juror – not the case agent – who referred to a document as "a pretty chilling revelation here." Such phrases are clearly provocative, perhaps even incendiary.

Dkt. # 84 at 7 (Dec. 16, 2010) (citations omitted). Counsel declined, however, to read the two sentences that directly followed the excerpt stated above. To wit, the Order continues:

But [the phrases] do not establish either substantial prejudice or improper grand juror bias. Rather, they simply reflect jurors' reaction to the actual facts of this case, as conveyed through documentary evidence.

*Id.* Accordingly, to the extent counsel intended to suggest that the Court's recognition of provocative, possibly incendiary, comments made by grand jurors in its December 2010 Order requires granting Defendant's present motion in its entirety, neither the language nor rationale of the Order supports such a conclusion.

Thus, for reasons set forth above, Defendant's motion is GRANTED with respect to paragraphs 34 and 36, and DENIED with respect to the remainder of allegations.

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**IT IS SO ORDERED.**